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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,929

Applicant(s)

QUAINTANCE, BENJAMIN

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 2-5, 8 and 14-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following are each a double inclusion of an element insofar as the element is being reintroduced into the claims: claim 2, “an adjacent side wall” (---an adjacent said side wall--- would refer back to the side wall previously defined in the claim) and “an associated end flap panel”, claim 4, “an associated side wall”, claim 5, “an associated side wall”, claim 8, “a respective end flap panel”, claim 14, lines 12 and 13, “an associated end wall panel”, claim 15, 11 and 12, “a respective end wall panel” and “an associated end wall panel”, claim 16, lines 13, 14, 17, 19 and 27, “a respective end wall panel”, “a respective end wall panel”, “associated end walls”, “a respective cover end wall panel”, “a respective...and associated roll-over flap” and “a respective hand hold opening”, claim 17, lines 19 and 20, “respective end wall panels” and “an associated web” and claim 18, lines 20, 23, 24, 26 and 27, “a respective end wall panel”, “a respective end wall”, “an associated end wall panel” and “an associated...and roll-over flap”.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1, 2 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Heineman or France '619. Each of Heineman and France '619 discloses all structure of the claimed container and blank except sidewalls with free upper edges, i.e. each of Heineman and France '619 include closure panels hinged to the upper edges of at least one of the sidewalls. It would have been obvious to eliminate the closure panels in either Heineman or France '619 as a mere elimination of a part and its function since closure panels to close the top of the box are not necessary to the operation of the container to hold contents, i.e. closure panels are considered optional as to whether one wishes an open container or a container which can be closed. The omission of an element and its function where not needed has been held to be obvious. See *In re Karlson*, 136 USPQ 184 (CCPA 1963), *In re Wilson*, 153 USPQ 740 (CCPA 1967) and *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. of App. 1969).

4. Claims 1, 2, 6-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruiz et al. Ruiz et al discloses all structure of the claimed container and blank except sidewalls with free upper edges, i.e. Ruiz et al includes closure panels hinged to the upper edges the sidewalls. It would have been obvious to eliminate the closure panels in Ruiz et al as a mere elimination of a part and its function since closure panels to close the top of the box are not necessary to the operation of the container to hold contents, i.e. closure panels are considered optional as to whether one wishes an open container or a container which can be closed. The omission of an element and its function where not needed has been held to be obvious. See *In re Karlson*, 136 USPQ 184 (CCPA 1963), *In re Wilson*, 153 USPQ 740 (CCPA 1967) and *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. of App. 1969).

5. Claims 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinek et al in view of any one of Ruiz et al, Heineman or France '619. Martinek et al discloses a cover and blank including end flaps and a roll over panel 7 connected to an end panel via a web of material. Martinek et al does not disclose an interlocking means including a notch in one of the end flap panels engaging a portion of the web, and hook means extending into the notch. Each of Ruiz et al, Heineman and France '619 teaches that it is known to secure a roll-over panel by providing interlocking means including a notch with a hook means therein which engages within an aperture separating webs between a roll-over panel and an end panel. It would have been obvious to secure the roll-over panels in Martinek et al using an interlocking means as taught by any one of Ruiz et al, Heineman or France '619 since the interlocking means provides better securement of the roll-over panel than the construction shown in Martinek et al.

Allowable Subject Matter

6. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 3-5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Claims 15, 16 and 18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

9. Applicant's arguments filed 14 November 2005 have been fully considered but they are not persuasive.

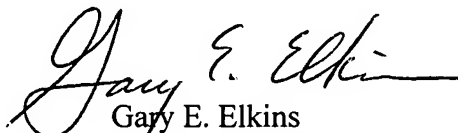
The remarks assert that France '619 and Ruiz et al do not disclose any structure corresponding to the end flap panels with at least one notch in their upper edges as required by the claims. In response, France '619 clearly discloses end flap panels 5 with notches formed in the upper edges into which laterally extending hooks 7a project. No distinction is seen between the claimed interlock and that shown in France '619. Ruiz et al evidences a similar interlock construction including end flap panels E1, F1, etc. and hooks 37 insofar as claimed.

With respect to the rejection of claims 14 and 17 above, the remarks assert that Martinek et al fails to disclose the interlock being claimed and that any modification of the cover in Martinek et al to include the locking structure in one of Ruiz et al, Heineman or France '619 would not produce the claimed invention. In response, Martinek et al discloses a cover 2 formed by the blank as shown in fig. 3. It is agreed that Martinek et al does not disclose the interlock of the end flaps 8 with the roll-over panels 7 as claimed. However, each of Ruiz et al, Heineman and France '619 suggest securing a roll-over panel using an interlock insofar as claimed. As stated in the rejection, the inclusion of such an interlock as taught by these references within a roll-over type cover construction as in Martinek et al would have been obvious to one of ordinary skill in this art. Such a modification would not have altered the nature and/or defeat the purpose of the cover in Martinek et al. Also, it is noted that the cover side walls 5 in Martinek et al include free lower edges.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
23 January 2006